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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRELL BRADFORD NUNNERY,

Defendant and Appellant.

B187212

(Los Angeles County
Super. Ct. No. KA070724)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Bruce F. Marrs, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M.
Daniels and Michael C. Keller, Deputy Attorneys General, for Plaintiff and
Respondent.

Terrell Bradford Nunnery was convicted by jury of unlawfully driving or taking a vehicle, and the court found true an allegation that he had served a prior prison term. He was sentenced to state prison for the high term of three years plus one year for the prior prison term. Nunnery appeals, claiming his high term sentence must be reversed because the facts on which it is based (that he was on parole at the time of the current offense, that he had five convictions over the previous four years, and that the convictions were for crimes of increasing seriousness) were neither found by a jury nor admitted by him. (*United States v. Booker* (2005) 543 U.S. 220; *Blakely v. Washington* (2004) 542 U.S. 296; *Apprendi v. New Jersey* (2000) 530 U.S. 466.)

Leaving to one side the Attorney General's claim of waiver, and recognizing that the *Blakely* issue is presently pending before the United States Supreme Court in *Cunningham v. California*, No. 05-6551 (cert. granted Feb. 21, 2006, 126 S.Ct. 1329), we are presently bound to follow *People v. Black* (2005) 35 Cal.4th 1238, and reject Nunnery's claim on this ground. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

DISPOSITION

The judgment is affirmed.

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VOGEL, J.

We concur:

MALLANO, Acting P.J.

JACKSON, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.